Tronsen v. Toledo-Lucas County Public Library Doc. 9

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANDERS TRONSEN,	*	Case No. 3:08-CV-148
Plaintiff	*	JUDGE CARR
	*	
vs.	*	DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
	*	
TOLEDO-LUCAS COUNTY PUBLIC LIBRARY	*	
Defendants	*	Julia R. Bates Lucas County Prosecuting Attorney By: John A. Borell (0016461) Karlene D. Henderson(0076083) Assistant Prosecuting Attorneys Lucas County Courthouse, Suite 250 Toledo, Ohio 43624 Phone: (419) 213-2001 Fax: (419) 213-2011 E-mail: JABorell@co.lucas.oh.us Counsel for Defendant

I. STATEMENT OF THE CASE

On January 17, 2008, the plaintiff filed a pro se complaint alleging a violation of the First Amendment rights of free speech and expression. The plaintiff also sought a temporary restraining order allowing him access to the public library during the pendency of this action.

While not entirely clear, the plaintiff appears to claim that his removal from the Library and subsequent temporary revocation of his library privileges violated his constitutional rights. He does NOT allege a due process or equal protection violation. Rather, he appears to assert that the defendant's

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adoption of such a policy violates the First Amendment to the United States Constitution and the free speech clause of the Ohio Constitution. On January 22, 2008, the plaintiff's motion for a temporary restraining was denied.

The plaintiff then filed a "Writ of Prejudice" seeking removal of the trial judge from the case. The defendant filed a memorandum in opposition establishing that the plaintiff had failed to establish any of the statutory bases for the removal of a judicial officer and his request must be denied. This motion is pending.

The defendant now files this motion for summary judgment. The defendant is entitled to judgment as a matter of law, since there is no evidence before the Court that the plaintiff's First Amendment rights were violated by the defendant.

II. STATEMENT OF THE FACTS[1]

On December 10, 2007, the plaintiff was at the main branch of defendant Toledo-Lucas County Library. He was using one of the public computer terminals. A woman patron was using the terminal next to the plaintiff.

The plaintiff handed the woman patron a note asking that if she "weren't involved with someone, would she email him at a nudity site". The female patron was extremely frightened by the plaintiff's conduct and notified the defendant's security personnel.

Disruptive library patrons have become a significant problem for the defendant. In order to control disruptive patrons and protect the rights and safety of Library staff and patrons, it has become necessary for the defendant to employ a 30 person security staff. This staff includes Lucas County Sheriff deputies and Toledo Police Officers.

[1] The Statement of Facts is based on the affidavit of Jeff Sabo and documents attached thereto that were submitted by the defendant in support of its memorandum in opposition to the plaintiff's motion for a temporary restraining order.

It has also become necessary for the defendant to adopt a Code of Conduct which is entitled 'Eviction Procedures & Guidelines'. A copy of this policy was also attached to the defendant's memorandum in opposition to plaintiff's motion for summary judgment.

Library security personnel recognized the description provided by the patron as being the plaintiff. On December 19, 2007, the plaintiff was again at the main branch of the Library. He was recognized by security personnel and questioned about the December 10th incident. The plaintiff admitted that he handed the female patron the note in question.

On December 20, 2007, the plaintiff was notified in writing that his conduct violated the defendant's posted Code of Conduct and that his Library privileges were suspended for six months. The written notification also advised the plaintiff of his right to appeal this decision.[2] The plaintiff did not invoke the defendant's administrative appeal process.

The plaintiff has a long history of harassing library patrons and staff. His library privileges were previously suspended for harassing library patrons. The plaintiff filed an action in the Lucas County Common Pleas Court challenging the suspension and seeking injunctive relief. The Court denied the request for a temporary restraining order and a preliminary injunction. The Court subsequently granted the motions to dismiss that had been filed by all defendants.

On January 17, 2008, the plaintiff filed a pro se complaint alleging a violation of the First Amendment rights of free speech and expression of the United States Constitution and the free speech clause of the Ohio Constitution. The plaintiff also sought a temporary restraining order allowing him access to the public library during the pendency of this action.

While not entirely clear, the plaintiff appears to claim that his removal from the Library and subsequent temporary revocation of his library privileges violated his constitutional rights. He does NOT allege a due process or equal protection violation. Rather, he appears to assert that the defendant's adoption of such a policy violates the First Amendment to the United States Constitution and the free speech clause of the Ohio Constitution. On January 22, 2008, the plaintiff's motion for a temporary restraining was denied.

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[2] The defendant's written Code of Conduct includes a procedure to challenge a decision the Code has been violated.

The plaintiff then filed a "Writ of Prejudice" seeking removal of the trial judge from the case. The defendant filed a memorandum in opposition establishing that the plaintiff had failed to establish any of the statutory bases for the removal of a judicial officer and his request must be denied. This motion is pending.

The defendant now files this motion for summary judgment. The defendant is entitled to judgment as a matter of law, since there is no evidence before the Court that the plaintiff's First Amendment rights were violated by the defendant.

III. LAW AND ARGUMENT

A. Standard for Granting a Motion for Summary Judgment

Summary judgment is proper "if the pleading, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corporation v. Catrett*, 477 U.S. 317, 322(1986); *Fed. R. Civ. P.* 56(c). A party seeking summary judgment bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrates the absence of a genuine issue of material facts. *Celotex*, 477 U.S. at 323. However, Rule 56 does not require the moving party to *negate* the elements of the nonmoving party's case; to the contrary, regardless of whether the moving party accompanies its summary judgment motion with affidavits, the motion may, and should, be granted so long as whatever is before the court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c), is satisfied. *Lujan, et al. v. National Wildlife Federation, et al.,* 497 U.S. 871, 885(1990); *Celotex,* 477 U.S. at 323. Thus, the nonmoving party must produce evidence on any issue for which he bears the burden of production at trial. *Id.* at 322-23.

B. Plaintiff's First Amendment Rights were not Violated

Plaintiff's complaint is premised on his claim that his temporary expulsion from the defendant library violated his free speech rights under the First Amendment the First Amendment to the United States Constitution.[3] Accordingly, this Court must initially determine the existence and extent of such rights in a public library. *See Cornelius v. NACCP & Education Fund, Inc.*, 473 U.S. 788, 797(1985).

While there is a First Amendment right of public access to information, this right, of course is not without limits. *Kreimer v. Bureau of Police for the Town of Morristown*, 958 F.2d 1242, 1255(3d Cir. 1992). The state or its instrumentality may regulate access to and the use of its libraries. *Brown v. Lousiana*, 383 U.S. 131, 143(1966). The extent to which the government may limit this right of access depends on whether the forum in public or non-public. *Id.*

Courts have identified three types of government forums: (1) public forums, such as streets, parks, public sidewalks or other public places, which have by longstanding tradition or government fiat have been devoted to assembly and debate; (2) limited public forums which consist of public property that is not open for the exercise of all First Amendment rights; and (3) non-public places which are not by tradition or designation forums for public communication. *Kreimer*, 958 F.2d at 1255-6, 1260. For First Amendment

[3] The complaint also alleges a caused of action under the free speech clause of the Ohio Constitution. The Ohio Supreme Court has held that the free speech clause of the Ohio Constitution, Section II, Article I, is no broader than the United States Constitution and the case law of the First Amendment is a proper basis for interpreting Ohio's free speech clause. *Eastwood Mall v. Slanco*, 68 Ohio St.3d 221, 626 N.E.2d 59(1994).

purposes, a public library is a limited public forum. *U.S. v. American Library Association, Inc*., 539 U.S. 194, 206(2003); *Hill v. Derrick*, 240 Fed. Appx. 935, 937(3r. Cir. 2007); *Neinast v. Bd. of Trustees of the Columbus Metro. Library,* 346 F.3d 585, 591 (6th Cir. 2003), 958 F.2d at 1259 (3d Cir. 1992).

Courts have refused to characterize the public library as a traditional public forum because library users are not allowed to engage in certain expressive conduct ordinarily associated with such forums. *Kreimer,* 958 F.2d at 1256. Therefore, a library is obligated only to permit the public to exercise rights that are consistent with the nature of a library and consistent with the government's intent in designating the library as a public forum but other activities need not be tolerated. *Kreimer,* 958 F.2d at 1262; *Neinast,* 346 F.3d at 591. Traditionally, libraries provide a place for reading, writing, and quiet contemplation. *Neinast,* 346 F.3d at 591 (quoting *Kreimer,* 958 F.2d at 1261). Indeed, the exercise of oral and interactive First Amendment activities is antithetical to the nature of a library. *Kreimer,* 958 F.2d at 1261; *Mainstream Loudon, et al. v. Board of Trustees of the Loudon Public Library*, 24 F. Supp.2d 552, 563(E.D. Va. 1998).

In addition, regardless of the name of the forum, the First Amendment does not prohibit regulation of conduct. In *Kreimer,* the court held that a written rule governing conduct of a harassing or annoying nature was controlled by the reasonableness test because such restrictions are not aimed at activities which the government had specifically permitted in the library. *Kreimer*, 958 F.2d at 1263 n.24. Applying that test, the court concluded such a rule was "fundamentally reasonable" because a prohibition against disruptive behavior is perhaps the clearest and most direct way to achieve maximum use of a public library. *Kreimer,* 958 F.2d at 1263; *Leonard Brinkmeier v. City of Freeport*, Case No. 93 C 20039(N.D. Ill. July 2, 1993), 1993 U.S.Dist. *LEXIS* 9225.

In the present case, it is undisputed that the plaintiff's library privileges were temporarily suspended because of his harassment of another patron. Specifically, he handed a sexually suggestive note to a female patron who was a complete stranger to him. Clearly, the First Amendment does not protect such conduct. Additionally, the library clearly has a legitimate and fundamental interest in protecting library patrons from the type of disruptive and harassing conduct engaged in by the plaintiff.

Thus, it is clear that the plaintiff has failed to establish the defendant's temporary suspension of his library privileges did not violate the plaintiff's First Amendment rights. Therefore, the defendant is entitled to judgment as a matter of law.

IV. CONCLUSION

It is a reality of modern society that even public libraries must deal with disruptive patrons whose conduct does not comport with the purpose of a public library. If public libraries are to continue to provide a place for reading, writing, and quiet contemplation, they must have the ability to regulate disruptive patrons such as the plaintiff.

Clearly, the First Amendment allows the defendant to adopt rules governing conduct of a harassing or annoying nature because such restrictions are not aimed at activities which the government had specifically permitted in the library. Courts have concluded that such rules are "fundamentally reasonable" because a prohibition against disruptive behavior is perhaps the clearest and most direct way to achieve maximum use of a public library.

Respectfully submitted

JULIA R. BATES
LUCAS COUNTY PROSECUTING ATTORNEY

By: /s/ John A. Borell
John A. Borell
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Assistant Prosecuting Attorneys
Counsel for Defendant

CERTIFICATION

A copy of the foregoing Motion for Summary Judgment was sent by email and ordinary mail to the plaintiff on the 26th day of February 2008.

/s/ John A. Borell
John A. Borell
Assistant Prosecuting Attorney
Counsel for Defendant